

**IN THE MATTER OF THE CLAIM
OF CAROL LOGAN,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND
FOR THE ALLEGED ACTS OR
OMISSIONS OF LEE ARTHUR
HUTTON,
T/A HUTTON BUILDERS, INC.,
RESPONDENT**

*** BEFORE WILLIAM F. BURNHAM,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
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* OAH No.: LABOR-HIC-02-21-09971
* MHIC No.: 21 (75) 136

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On September 9, 2020, Carol Logan (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$23,500.00 in actual losses allegedly suffered as a result of a home improvement contract with Lee Hutton, trading as Hutton Builders, Inc. (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹

¹ Unless otherwise noted, all references hereinafter to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

Date	Description	Amount	Balance	Remarks
1912				
Jan 1	Balance			
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Jan 10	...			
Jan 15	...			
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Jan 25	...			
Jan 30	...			
Feb 1	...			
Feb 5	...			
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Mar 1	...			
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Dec 15	...			
Dec 20	...			
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Dec 30	...			
Total				

On April 13, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on June 27, 2021 via the Webex videoconferencing platform. Md. Code Ann., Bus. Reg. §§ 8-407(a), 8-312. Eric London, Assistant Attorney General, represented the Fund. The Claimant represented herself. Maureen S. Danos, Esquire, represented the Respondent, who was not present.²

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted Clmt. Ex. 1³ on the Claimant's behalf with the following attachments:

- Untitled Notes, various dates February to July 2020
- Respondent's Proposal, February 23, 2020
- Additional Work Authorization, undated
- Respondent's Job Invoice, February 11, 2020
- Copy of Check #1023, April 13, 2020
- PCFGU⁴ Bank Statement, April 30, 2020
- Notes and a death notice, various dates February to May 2020
- Claim Against Decedent's Estate, July 22, 2020

² Ms. Danos identified herself as the attorney for the estate of Mr. Hutton.

³ It is a ten-page packet sequentially numbered 1 to 9 beginning on the second page. I maintain the numbers because the Claimant referenced the packet by the numbers on the exhibit.

⁴ The acronym was not identified further.

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The Respondent did not offer any exhibits.⁵

I admitted the following exhibit(s) on the Fund's behalf:

- Fund Ex. 1 - Notice of Remote Hearing, May 11, 2021
- Fund Ex. 1A - Notice of Remote Hearing, June 1, 2021
- Fund Ex. 2 - Hearing Order, April 2, 2021
- Fund Ex. 3 - Respondent's MHIC Licensing History, May 20, 2021
- Fund Ex. 4 - Home Improvement Claim Form, September 11, 2020
- Fund Ex. 5 - Letter from the MHIC to the Respondent, September 16, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent did not present witnesses.

The Fund did not present witnesses.

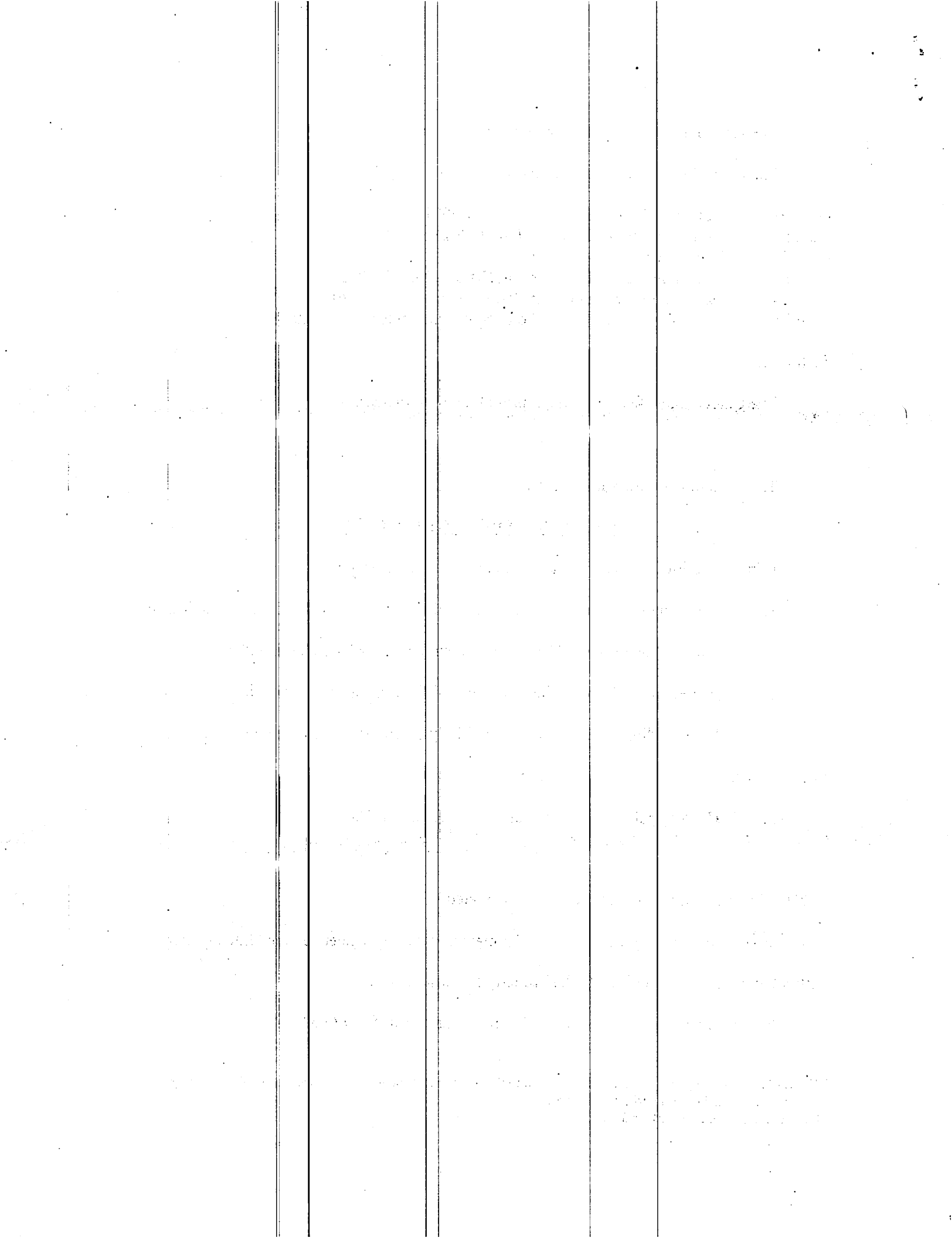
PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license numbers 01-42786 and 05-4275.
2. On February 11, 2020, the Claimant and the Respondent entered into a contract to remove and replace a sliding glass door and install lolly columns⁶ in the basement (Contract) of a property located in Newark, Delaware (Property).
3. The original agreed-upon Contract price was \$4,700.00.
4. On February 11, 2020, the Claimant paid the Respondent \$3,000.00 and \$1,700.00 was due when the Contract was completed.
5. On February 22, 2020, the Claimant and the Respondent entered into another contract to construct an addition to the Property (Contract II).
6. The original agreed-upon Contract II price was \$247,695.00.

⁵ The OAH received a packet of documents related to the Respondent, none of which were offered into evidence. The packet remains in the file for completeness.

⁶ Lolly columns were not further described.



7. On February 23, 2020, the Claimant paid the Respondent a \$5,000.00 deposit.

8. On April 13, 2020, the Claimant paid the Respondent \$20,000.00; she gave him a check for \$11,000.00 and \$9,000.00 in cash. The Respondent promised to provide the Claimant with a receipt.

9. The home improvements in the Contract and Contract II (Contracts) were to be completed at the Property.

10. When the Contracts were signed, the Claimant lived with her sister in Elkton, Maryland.

11. At some point in April 2020, after signing Contract II, the Respondent removed a shed from the Property. The cost to the Claimant for the shed removal was \$3,000.00.

12. The Respondent purchased a glass door related to the Contract and it was valued at \$1,650.00. The Claimant picked up the sliding glass door the Respondent purchased.

13. On May 1, 2020, the Respondent died from complications of COVID-19.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2014); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or

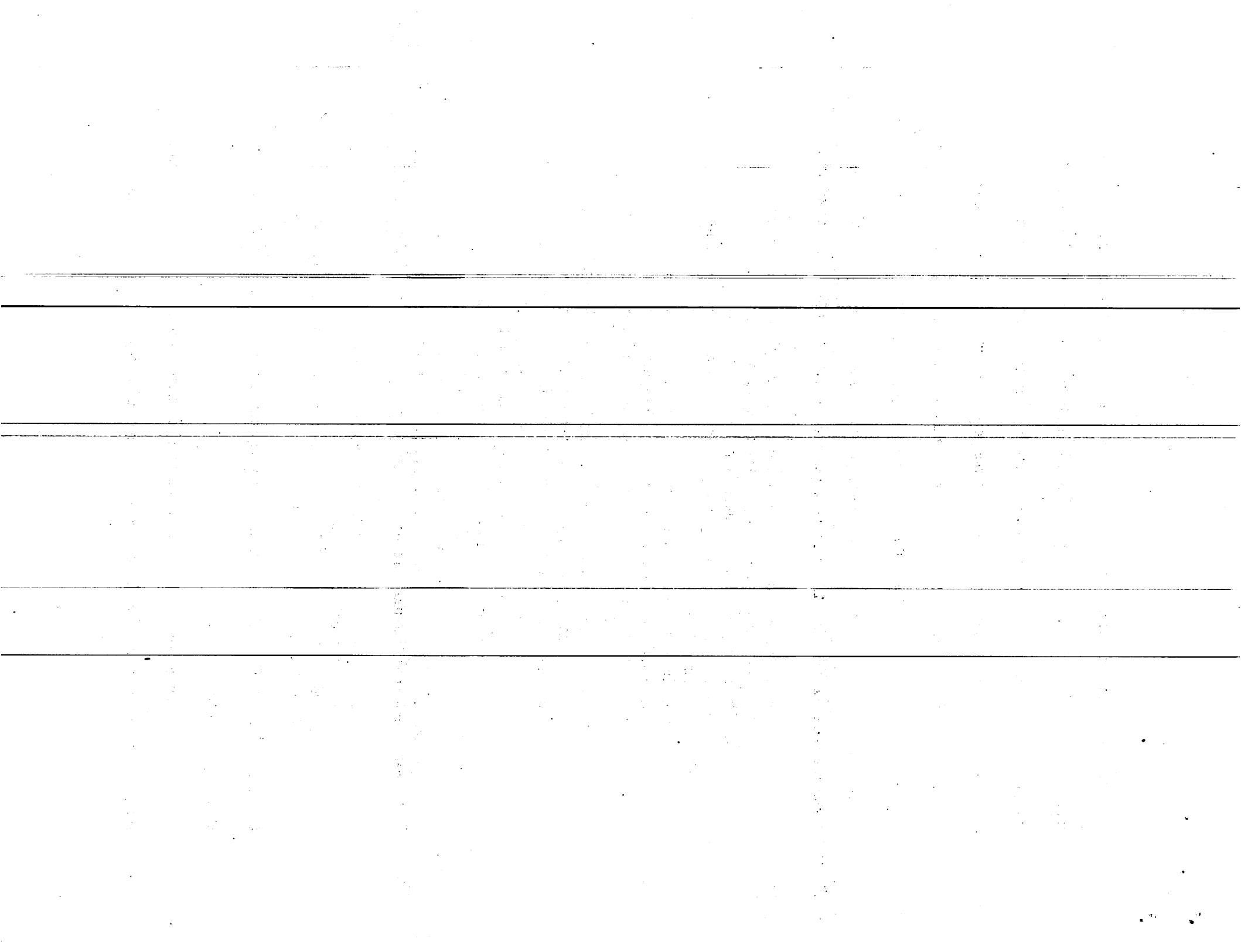
incomplete home improvement.” Md. Code Ann., Bus. Reg. § 8-401. “An owner may make a claim against the Fund only if the owner: (i) resides in the home as to which the claim is made; or (ii) does not own more than three residences or dwelling places.” Under the Business Article, an “[o]wner” includes a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement.” Md. Code Ann., Bus. Reg. § 8-101(k). Claims are referred to a hearing board of the Commission for investigation and review. COMAR 09.08.03.02D.

The circumstances under which the hearing board may dismiss a claim include the following:

- (a) Claimant’s Response.
 - (i) If, upon initial review, the hearing board finds that the claim is frivolous, made in bad faith, or legally insufficient, the hearing board shall forward its finding, including the basis for its finding, to the claimant.
 - (ii) The claimant shall have 30 days from the date of the hearing board’s letter forwarding its finding to respond in writing to the hearing board.
- (b) Final Decision to Dismiss.
 - (i) If the hearing board, after a review of any written response from the claimant, determines that the claim is frivolous, made in bad faith, or legally insufficient, the hearing board shall issue an Order dismissing the claim.
 - (ii) Unless the Commission or any of its members determines within 15 days of the issuance by a hearing board of its Order that a full hearing by the Commission is required, the Order of the hearing board shall be a Final Order which may be appealed by the claimant directly to the circuit court where any party resides or has a principal place of business.
- (c) The hearing board may dismiss a claim as legally insufficient if the claimant has unreasonably rejected good faith efforts by the contractor to resolve the claim.
- (d) The hearing board may dismiss a claim as legally insufficient if the contractor was unlicensed when the contract was entered into but licensed during the performance of the contract unless:
 - (i) The claimant establishes by a preponderance of the evidence that the claimant did not know that the contractor was unlicensed at the time the contract was entered into; and
 - (ii) A substantial portion of the contractor’s alleged misconduct occurred after the contractor became licensed.

COMAR 09.08.03.02D(3). For the following reasons, I find that the Claimant has proven eligibility for compensation.

The Claimant testified that she was living with her sister in Elkton, Maryland at the time she entered into the Contracts with the Respondent. She was having renovations made to the

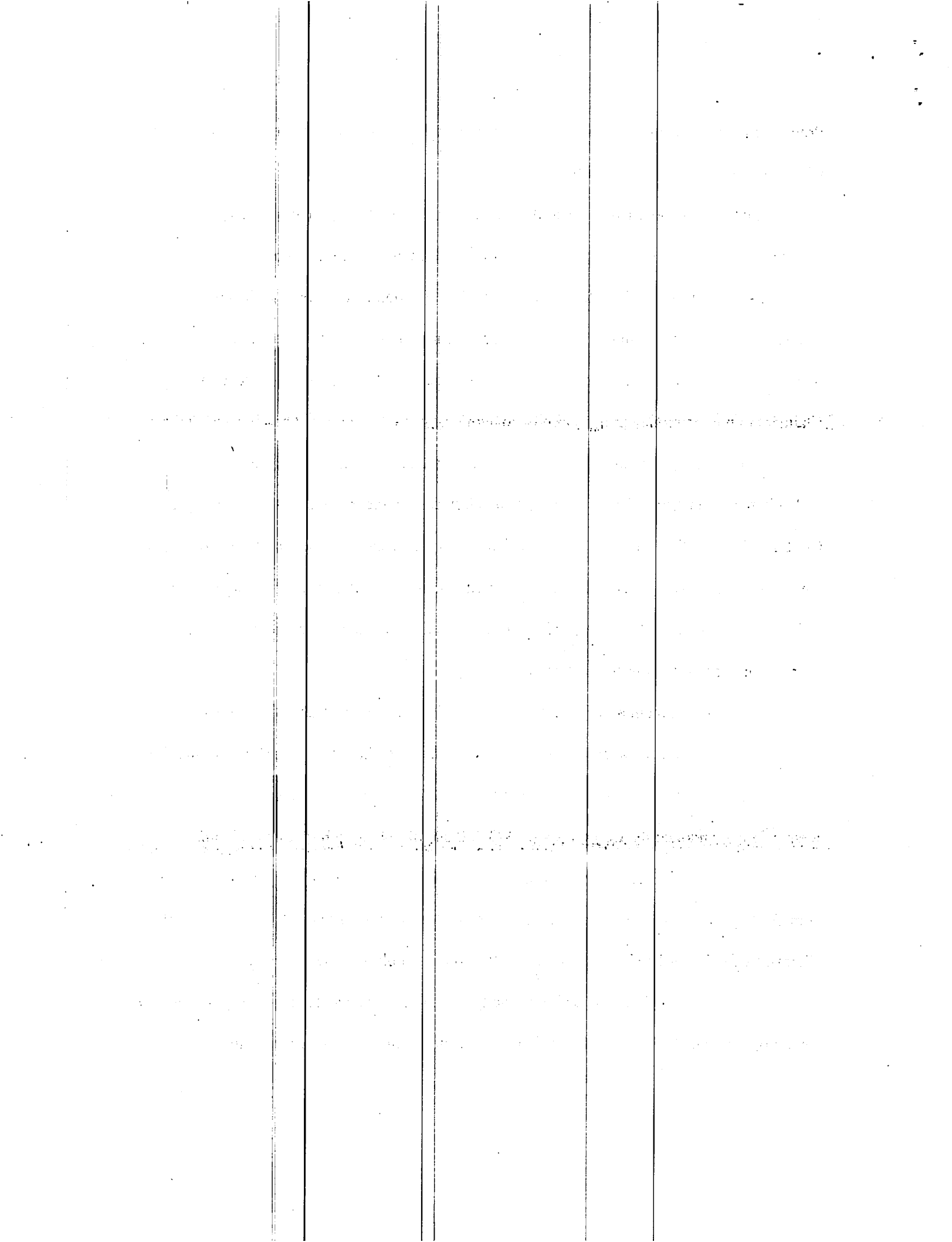


Property in which she planned to live: The Property belonged to her daughter and son-in-law who had asked her to move in with them.

The Claimant testified she paid the Respondent \$28,000.00 in total for the Contracts. She gave him \$3,000.00 when she signed the Contract and when she entered into Contract II, she paid a \$5,000.00 deposit. Sometime in April 2020 the Respondent removed a shed on the Property and ordered a sliding glass door. Also in April 2020, the Respondent told the Claimant he needed \$20,000.00 more to begin Contract II. Because he was ill, the Respondent asked the Claimant to put the money in his mailbox, to avoid infecting her, and told her he would give a receipt for the money she paid. The Claimant testified that she agreed, and deposited check #1023 in the amount of \$11,000.00 and \$9,000.00 in cash in the Respondent's mailbox. *See* Clmt. Ex. 1., p. 6. She sat in her vehicle and watched the Respondent pick up the deposit after which time, he waived to her. The Claimant tried to contact the Respondent throughout April 2020 to obtain the receipt the Respondent promised her, but he never responded. She never heard from nor saw the Respondent again.

The Claimant maintained that the only work the Respondent did was to remove the shed from the property over the course of three days and order the glass door. The value of the shed removal was \$3,000.00 and glass door cost \$1,650.00. Therefore, according to the Claimant, the Respondent abandoned the Contracts with \$23,350.00 still owing to her. The Claimant eventually contacted the Respondent's wife who told her that the Respondent died of COVID-19 complications on May 1, 2020, and, because the business was his, she could not help the Claimant with the retrieval of the money the Respondent took from her.

The Fund argued that the claim is legally insufficient because the home improvement was for a property outside the state of Maryland, so the Fund could not recommend any award. *See*



Fund Ex. 4 (providing that a claim is legally insufficient if, “[t]he contract involved work to be done outside the state of Maryland”); *and see also* Clmt. Ex. 1., pp. 2 and 5.

The Claimant testified that she was preparing to move into her daughter’s home and contracted for home improvements to the home before her move. The Claimant, therefore, was an owner under the statutory definition because she contracted for, and was entitled to, a home improvement at the Property. *See* Md. Code Ann., Bus. Reg. § 8-101(k). The Claimant contracted with an MHIC-licensed contractor, the Respondent. *See* Fund Ex. 3. As an owner, the Claimant was entitled to make a claim against the Fund for compensation for an actual loss because she does not own more than three residences or dwelling places. Md. Code Ann., Bus. Reg. § 8-405(f)(2)(ii). As evidenced by her testimony on cross-examination by the Fund, there were no other statutory reasons precluding the Claimant from recovery from the Fund. *See* Md. Code Ann., Bus. Reg. § 8-405.

The Fund cited no law or regulation in its argument that the claim was legally insufficient.⁷ Indeed, except for statement on the Home Improvement Claim Form, there is no statute or regulation precluding a claim if the work was to be done outside the state of Maryland. The Contracts were entered into with an MHIC-licensed contractor, the Respondent. The Respondent was subject to the laws and regulations of the Commission, and the Commission at least contemplated that some MHIC-licensed contractors may provide home improvement services outside the state of Maryland. *See* COMAR 09.08.01.09D(5) (“A statement that an offer in an advertisement is not valid in Maryland shall be conspicuously displayed in the advertisement”). Therefore, absent any law or regulation to the contrary, a claim involving work to be done outside the state of Maryland is not legally insufficient for that reason alone.

⁷ Additionally, the hearing board ostensibly investigated the claim and did not dismiss it before referring it the OAH. *See* COMAR 09.08.03.02D(3).

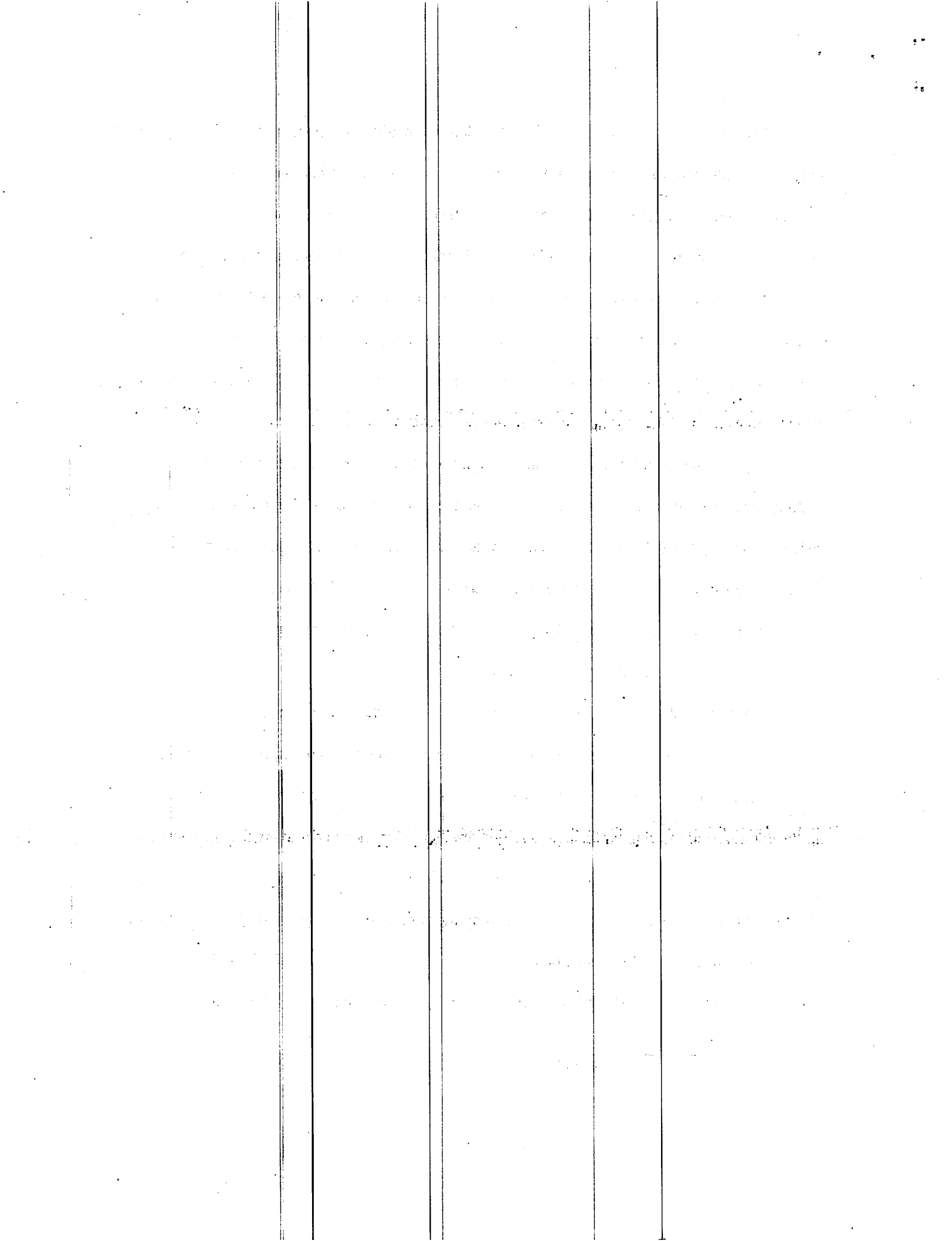
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The uncontroverted evidence is that the Claimant paid the Respondent \$28,000.00. The only work he did was to order a glass door for the Contract and remove a shed for Contract II. The uncontroverted evidence in this record is that the combined value of that work was \$4,650.00. Therefore, the Respondent had \$23,350.00 of the Claimant's money related to the Contracts when he abandoned the home improvement, and the Claimant did not testify that she sought another contractor to complete the home improvements described in the Contracts. The circumstances of the abandonment are tragic, but the fact remains that the Claimant suffered an actual loss as defined under the Business Regulation Article.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Md. Code Ann., Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1). The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.

In this case, the Respondent performed some work under the Contract, and the Claimant is not seeking other contractors to complete or remedy that work. Accordingly, the following formula appropriately measures the Claimant's actual loss: "If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor." COMAR 09.08.03.03B(3)(b).

Amount paid the Respondent	\$28,000.00
- Value of materials and services provided by the Respondent	\$4,650.00
<hr/>	
Actual Loss	\$23,350.00



The Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Md. Code Ann., Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a). In this case, the Claimant's actual loss of \$23,350.00 exceeds \$20,000.00. Therefore, the Claimant's recovery is limited to \$20,000.00. Md. Code Ann., Bus. Reg. § 8-405(e)(1); COMAR 09.08.03.03D(2)(a).

PROPOSED CONCLUSIONS OF LAW

I conclude that the Claimant has sustained an actual and compensable loss of \$20,000.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015); COMAR 09.08.03.03B(3)(a); D(2)(a). I further conclude that the Claimant is entitled to recover \$20,000.00 from the Fund.

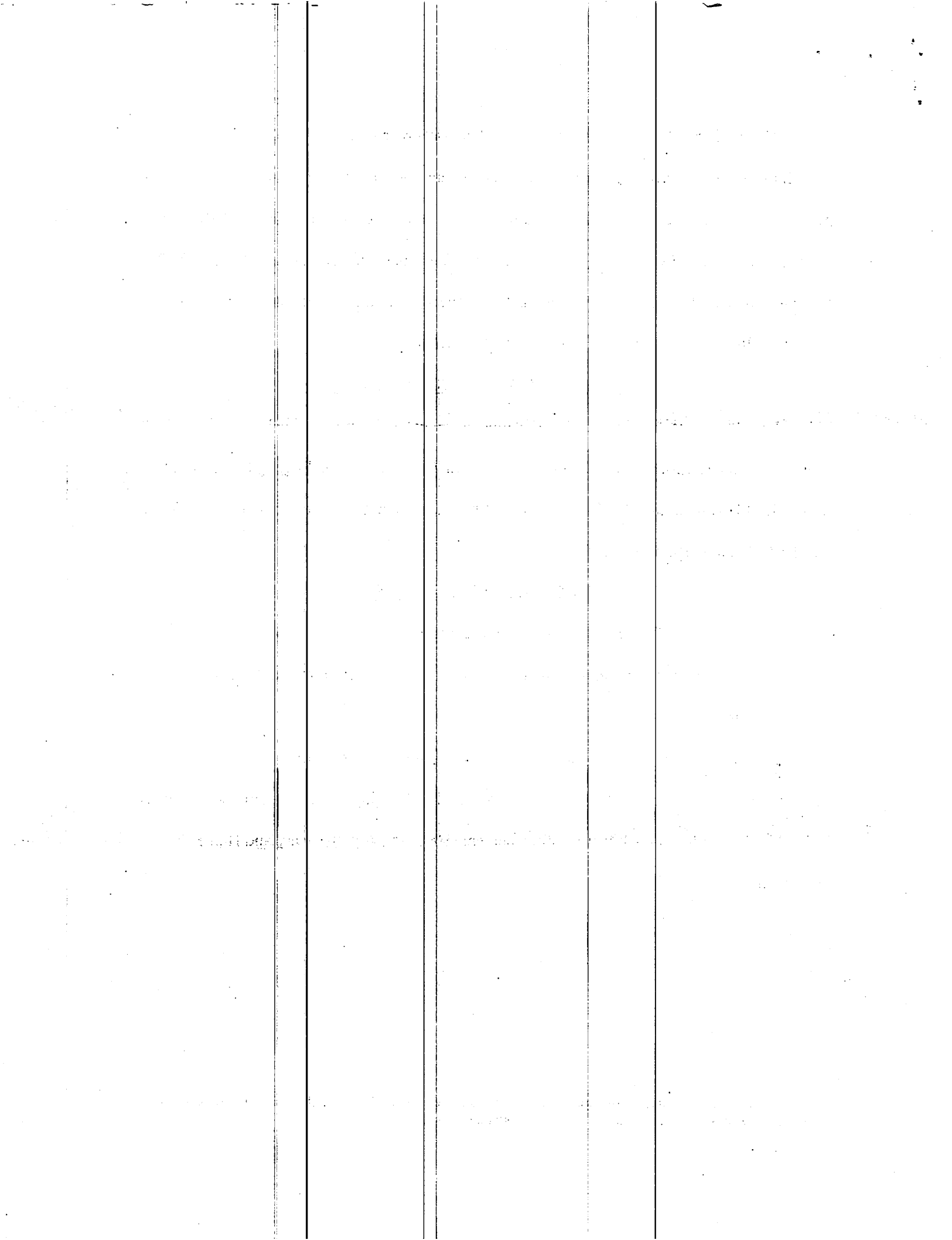
RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund award the Claimant \$20,000.00; and

ORDER that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;⁸ and

⁸ See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20. The fact that the Respondent is deceased makes this provision, although applicable, essentially ineffective.



ORDER that the records and publications of the Maryland Home Improvement

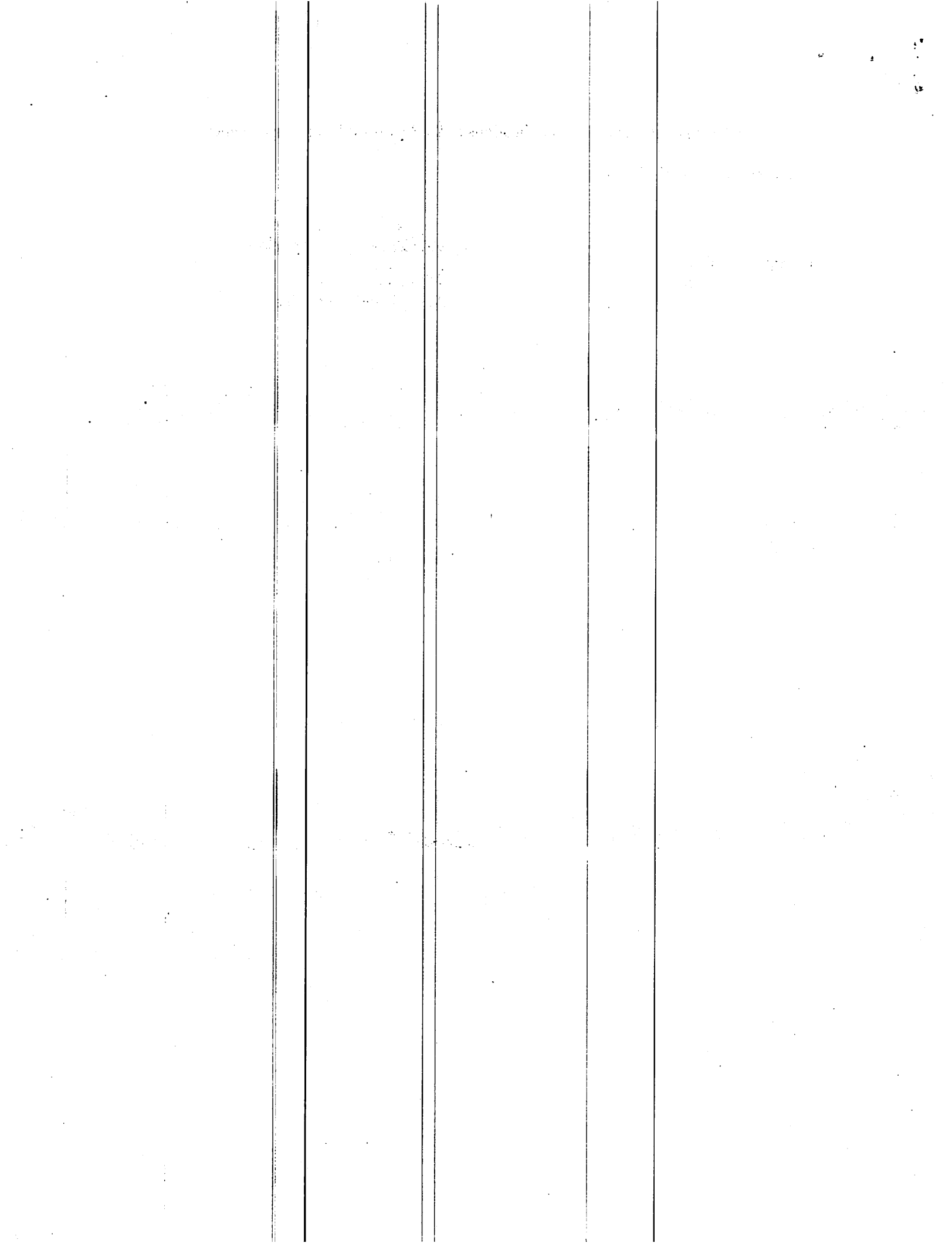
Commission reflect this decision.

September 1, 2021
Date Decision Issued

William F. Burnham

William F. Burnham
Administrative Law Judge

WFB/at
#193981



PROPOSED ORDER

WHEREFORE, this 8th day of December, 2021, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***

